IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.3715 OF 2007
IN
L. C. SUIT NO.2668 OF 2007

Pratima Shetty & Ors. ..Plaintiffs.
Vs.
Ronnie Gabriel Menezes and others ..Defendants.

....

Mr. K.K. V. Kurup for the Plaintiffs.
Mr. A.Y. Sakhare, Senior Advocate with Mr. Rajesh Singh for the Defendants.

....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

30th November, 2007.

P.C. :

1. The relief which has been sought in the Notice of Motion is to the following effect :

> "(a) that pending the hearing and final disposal of the Suit the Defendants, their Servants and Agents be restrained by an Order and Injunction of this Hon'ble Court from entering upon the Suit Land or for carrying on therein any activities and they be ordered and directed to forthwith remove themselves and the home of prostitution which is being conducted by them and also the illegal garages and hotel from the BMC land and keep the adjoining lands to suit premises free of all their encroachments."

2. The case of the Plaintiffs is that they are seized and

possessed of land admeasuring 44.28 sq. mtrs. situated adjacent to Cardinal Gracious Playground, Orlem Church, Malad (West) Mumbai. The Plaintiffs claim title on the basis of adverse possession. In paragraph 8 of the Plaint, it has been stated that the land belongs to Salsette Co-operative Housing Society. The society is not impleaded as a party to the suit. The suit is for possession and for damages. At Exh. A to the Plaint is a sketch, which to say the least is a rough hand written and illegible diagram. The Plaintiffs will not possibly be granted any relief on the basis of such a sketch. The land in respect of which the Plaintiffs claim relief will have to be precisely shown. That has not been done. In the affidavit in reply filed by the First Defendant, it has been stated that the Defendant claims to be in occupation of a portion admeasuring 393.25 sq. yds. comprised of CTS No.188, Survey No.44, Hissa No.4. According to the Defendants their property is distinct from the property involved in Suit 4417 of 1995 filed before the City Civil Court in which a partial decree was granted to the Plaintiffs on 21st November, 2006. The First Defendant has expressly stated in paragraph 11 that the property in respect of which the Defendants claim interest is altogether different. It appears that the Plaintiffs had instituted a Suit 352 of 1995 before

this Court for restoration of possession in which a Commissioner submitted a report on 22nd April, 1996. The report of the Commissioner was that one David Gabriel Menezes, the Second Defendant herein was in possession since 1969. The Suit, it would appear has now been dismissed in default on 11th January, 2002. On this state of the record, it would not be possible to entertain the prayer of the Plaintiffs for the grant of interlocutory relief at this stage. Counsel appearing for the Plaintiffs states that the Plaintiffs will take steps to amend the Plaint and thereafter apply for the grant of such relief to which the Plaintiffs may be entitled. Nothing needs to be observed in that regard since the Plaintiffs will be entitled to pursue such remedies as are open in law including the execution of the decree passed by the City Civil Court on 21st November, 2006 in S. C. Suit 4417 of 1995. The Notice of Motion is accordingly disposed of.